



QUALCOMM Incorporated

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October 19, 2005

Via ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Oral Ex Parte Presentation in WT Docket No. 05-7

Dear Ms. Dortch:

On behalf of QUALCOMM Incorporated ("QUALCOMM"), this is to report that yesterday, Jennifer McCarthy and I of QUALCOMM and Mark Wallace of Akerman Senterfitt met with Heather Dixon and Fred Campbell of Chairman Martin's office to discuss QUALCOMM's Petition for Declaratory Ruling in the above-referenced proceeding.

During the discussion, we provided Ms. Dixon and Mr. Campbell with background information on the MediaFLO service that QUALCOMM, through its MediaFLO USA subsidiary, is launching on its Channel 55 spectrum. We explained that QUALCOMM purchased five of its licenses for Channel 55 in the FCC's auction in 2003 and the one remaining license in 2004 through a private transaction. We also indicated that QUALCOMM has announced plans to offer commercial multimedia services to cellular and PCS subscribers through wholesale agreements with existing commercial mobile wireless carriers starting in the third quarter of 2006 and that the business plan for MediaFLO requires an investment of approximately \$800 million. We explained that the QUALCOMM team is in the process of completing detailed network plans for over 100 markets across the country and is engaged in acquiring long-term leases for tower space as well as deploying expensive infrastructure equipment to meet our commercial build-out schedule.

We then discussed the FCC's rules regarding the ability of new Part 27 licensees, such as QUALCOMM, to begin offering service using the 700 MHz spectrum they purchased prior to the end of the DTV transition. We explained how QUALCOMM is actively deploying its network in markets where there are no TV stations in operation in Channels 54, 55 or 56, that we have analyzed the remainder of the markets across the country to determine those markets in which we believe that we can co-exist with the incumbent TV stations, and, in those instances where it is predicted that there will be harmful interference, that we are

working to reach agreements with the stations in question prior to the end of the DTV transition.

We went on to discuss the vague aspects of Section 27.60 (b) (iii) of the Commission's rules for which QUALCOMM needs clarification in order to launch MediaFLO in certain important markets in which QUALCOMM would cause a very low level of interference to over-the-air reception of one or more adjacent channel or co-channel TV or DTV stations. We explained that while the rule allows QUALCOMM to submit an engineering study to justify the proposed separations, the rule does not specify the methodology to calculate interference to affected adjacent channel or co-channel TV/DTV stations; does not establish a level of *de minimis* interference, and does not explain how the Commission would process these engineering studies. To fill in these gaps in the rule, we asked for the clarification requested in QUALCOMM's Petition, namely that: (i) QUALCOMM be permitted to use the OET-69 methodology, which is well known to the Commission and the TV industry, to calculate interference; (ii) interference of 2% or less from QUALCOMM's MediaFLO service to an adjacent channel or co-channel TV/DTV station be deemed *de minimis*, the same provision that governs interference from one DTV station to a DTV or TV station on the very same Channel 55 spectrum; and (iii) the Commission adopt streamlined processing of the engineering studies.

In the course of this discussion, we stressed that Section 27.60 does not impose any "no interference" requirement on 700 MHz licensees such as QUALCOMM. Instead, we pointed out that the full protection afforded to TV and DTV stations under the rule is, as the rule states, that 700 MHz licensees such as QUALCOMM must "reduce the potential for interference" to TV and DTV stations by operating in accordance with the terms of the rule. We stated that the rule simply does not say that all interference must be eliminated. In addition, we noted that the Section 27.60 (b) (iii) provides that a 700 MHz licensee such as QUALCOMM may submit an engineering study "justifying the proposed separations" between the facilities of the 700 MHz licensee and that of a TV or DTV station, a provision which can only be read to mean that there is some level of interference resulting from such separations that the Commission would find to be justified. During this discussion, we provided Ms. Dixon and Mr. Campbell with the attached copy of Section 27.60.

Further, we explained that since filing its Petition for Declaratory Ruling, QUALCOMM has reduced its proposed signal strength by 3 dB because while the engineering exhibit to QUALCOMM's Petition assumed that QUALCOMM's MediaFLO service would operate at 50 kilowatts effective radiated power ("ERP") in both the vertical and circular polarizations, after filing the Petition, QUALCOMM learned that the Wireless Bureau interprets Part 27 of the Commission's rules as limiting QUALCOMM to transmitting at 50 kilowatts ERP

in the sum of all polarizations, rather than 50 kilowatts in both the circular and vertical polarization. We explained that this change significantly reduces the *de minimis* interference that MediaFLO would cause to much lower levels.

For example, we noted that in the Phoenix market, while QUALCOMM's original engineering exhibit showed interference to 0.44% of the population covered over the air by an adjacent channel station (14,177 people or 7,089 households), now after taking into account the 3 dB reduction in QUALCOMM's signal, MediaFLO would actually cause interference to only 0.01% of the population covered over the air by the station in question. This 0.01% translates to just 245 people (98 households). However, only 18.6% of the viewers in the Phoenix market watch TV over the air. As a result, the total number of potentially affected people is a mere 18 households, a number which must be further refined to determine the fraction of those 18 households who actually watch the impacted TV station over the air.

This is truly *de minimis* interference. We stressed that in determining as a policy matter whether to permit this *de minimis* interference, the Commission should weigh it against the millions of people in the Phoenix market who would gain access to MediaFLO and the plethora of innovative and worthwhile content that MediaFLO will deliver, if the Commission were to grant QUALCOMM's Petition.

During the course of the meeting, Ms. Dixon asked us to address a concern regarding the calculation of the 2% interference level in the context of TV-to-TV station interference as opposed to MediaFLO-to-TV station interference. The concern was that in the case of TV-to-TV station interference analyses, it is apparently assumed that the interference would only occur on the edges of a station's Grade B Contour and many of the people at the edge cannot actually receive the station in question over the air, thereby reducing the true impact of the interference to an amount less than 2%. We responded by noting that the OET-69 program calculates interference only to persons who could receive the station in question over-the-air in the first place and that, therefore, there was no difference between TV-to-TV station and MediaFLO-to-TV station calculation of a 2% impact from this perspective.

However, we also noted that there is one important difference between the way in which TV and DTV stations currently use the OET-69 program to calculate interference and the way in which MediaFLO has proposed to do so. The Part 27 D/U (desired to undesired signal) ratios are considerably more protective of adjacent channel and co-channel TV stations than the Part 73 D/U ratios are. As a result, using the exact same process to determine whether a given set of over-the-air viewers might be impacted that the TV stations use, but using the more stringent D/U ratios of Part 27, MediaFLO will actually protect adjacent

channel and co-channel stations to a much greater extent than a DTV station on the same spectrum would, even if both MediaFLO and the DTV station are subject to the same 2% *de minimis* standard.

Finally, the Commission has granted numerous applications for both low power and full power TV stations, digital and analog, to locate transmitters within the Grade B Contour of adjacent channel stations (in instances in which the proposed transmitter was not to be co-located with the transmitters of those stations), based on showings made by licensees using the OET-69 methodology to calculate interference to the adjacent channel stations. See QUALCOMM's Reply in Support of Petition for Declaratory Ruling (filed March 25, 2005) at Pg. 10, n.30 (listing six such applications granted from 1999 to 2004). Thus, the relief that QUALCOMM is seeking is both conservative in its protection of the TV and DTV stations and well within the Commission's precedents.

In sum, we emphasized that the very substantial benefits to the public interest that will flow from the innovative MediaFLO service will more than outweigh the *de minimis* interference—interference that only a very small percentage of over-the-air viewers of a limited number of TV and DTV stations on Channels 54, 55, or 56 in a limited number of markets will experience for a limited period of time (until the end of the DTV transition), and only when they happen to watch such a particular station over the air. For all of these reasons, we asked that the Commission expeditiously grant QUALCOMM's Petition for Declaratory Ruling.

Respectfully submitted,

/s/ Dean R. Brenner

Dean R. Brenner
Vice President, Government Affairs
QUALCOMM Incorporated

Cc: Heather Dixon
Fred Campbell